

Dear Sir or Madam:

This comment concerns proceeding 02-231, in which the forced implementation of, "broadcast flag," technology into digital television sets would become an FCC regulation. As a consumer, and one who plans to purchase a digital television system in the next year or two, I can only shake my head in disappointment at the idea that such a measure could be passed purely on the grounds of the potential piracy uses of digital broadcast signals.

Any time you force the use of a technology whose sole purpose is to regulate how people use the device in which it is implemented you will do immeasurable harm to the potential of that product. With digital television we're only talking about TV that looks better. Why does this need the kind of restrictive legislation that would diminish personal freedoms and rights to Fair Use of copyrighted content? Let me get this straight. I can own as many guns as I want, but I can't be trusted to record an episode of *Buffy the Vampire Slayer* on DVD?

Hollywood would have you believe that the whole country, and indeed the world, are just salivating behind their screens and PC keyboards licking their lips at the prospect of obtaining free movies and free programming. As if we consumers are all going to go home and download every second of broadcast programming there is so that we can create our own home video stores. My goodness! It could destroy the fabric of American businesses... err... culture.

Good god, could you give the average American just a little credit?

Americans, in no significant number, are planning to open up their own little piracy ring. Yes, maybe 1% of the population will become obsessed with getting every perfect DTV image they can get their hands on. But why regulate that? The average American just wants to watch TV when it airs. A few of us just want to record certain favorite programs to the medium of our choice without having to pass it through the copyright gestapo. And why shouldn't we be able to do so? Making a copy of copyrighted content is perfectly legal under the terms of Fair Use.

If I want to watch Super Bowl 80, then record it to a DVD disc, and in a few years when the technology comes around copy it to a HD-DVD disc then I should be able to do so. I, nor any other American consumer, should have to worry about whether or not some silly broadcast flag or watermark might mistake my actions as an attempt to make hundreds of thousands of copies to be sold for personal profit to a huge (and non-existent) audience. Then again, maybe there will be some collective think-tank of Super Bowl fans that happened to miss the game and are eager to have a copy of it for their very own. So eager they'd be willing to pay me untold sums of money for it.

And let's keep at least one eye on the future. If implemented, at some point, technologies like watermarking or broadcast flags are still going to go away. They'll outlive their usefulness. Hardware, like digital TVs, eventually won't "need" the technology anymore (note that they don't need it now either). What happens then? What happens when a bout of nostalgia compels a consumer to dig out an old recording -made from a broadcast flag-encoded signal- of *The West Wing* or a Learning Channel documentary on World War I?

Such concerns may be trivial. I assure you, though that it's no sillier than having to explain to your grandchildren that they can't see what TV was like in their grand-pop's day because "modern" televisions can't play back those old fashioned video broadcasts due to some broadcast flag thingamajig that's so antiquated that no one remembers why it was necessary in the first place.

Land of the free? Innocent until proven guilty? These notions, which are fundamental to what we associate with America, seem to have played no role in this so-called war on piracy. This country was founded on the idea that you have to do something wrong in order to be punished for it. Technologies, like this proposed broadcast flag, operate off the assumption that Americans are either pirates already or just waiting to become ones. So, let's go ahead and punish them for it now by forcing the implementation of technologies designed to regulate what we do with products we've purchased. Do gun owners have to prove to store

clerk that they're not going to run out and shoot up their neighborhoods before they're allowed to buy bullets?

If this trend continues we'll live in a world where people are sent to prison because they hacked the copy-protection out of an episode of *Home Improvement* so they could give a copy to a friend (just one) who missed it when it originally aired. And you know what? They'll deserve the hefty fines and prison time too. After all, anyone who would do such a thing is really no better than your average rapist, murderer or insider-trader.

I know, I know. That kind of thing could never happen in America. Anyway, I'd like to expound further but I've got to take a phone call from Dmitry Sklyarov. It seems he's still feeling a little blue after spending a month in prison (four months on bail) in 2001 after making a *presentation* about the shortcomings inherent in eBook copy protection measures. I keep telling him that he's just being silly. After all, the DMCA clearly states that talking to a group at a trade conference about how easy it is to break a copy-protection scheme could have landed him 25 years in prison and a \$250,000 fine. Makes the month in jail and \$50,000 spent on bail sound pretty cheap.

Oh and before I forget. I have a suspicion that one of my neighbors might be a communist sympathizer. Surely the government should do something about that, right? If you could let me know who's responsible for maintaining lists of these anti-American cronies I'll be happy to tell them all I know about these church-going, charity-donating, child-adopting, scholarship-sponsoring commie bastards.

Sincerely,  
Todd Brakke